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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

16
17 SECURITIES AND EXCHANGE
18 COMMISSION,

19 Plaintiff,

20 vs.

21 JAMMIN' JAVA CORP., dba MARLEY
22 COFFEE, SHANE G. WHITTLE,
23 WAYNE S. P. WEAVER, MICHAEL K.
24 SUN, RENE BERLINGER, STEPHEN B.
25 WHEATLEY, KEVIN P. MILLER,
MOHAMMED A. AL-BARWANI,
ALEXANDER J. HUNTER, and
THOMAS E. HUNTER,

26 Defendants.
27
28

Case No. 2:15-CV-08921-SVW-MRW

**DECLARATION OF
PETER SENECHALLE IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT – AND ATTACHED
EXHIBITS**

1 I, Peter Senechalle, declare pursuant to 28 U.S.C. § 1746, that
2 the following is true and correct, that this declaration is made on my
3 personal knowledge, and that I am competent to testify as to the
4 matters stated below:

5 1. I am employed as a Senior Attorney in the Division of
6 Enforcement of the United States Securities and Exchange Commission
7 (the “Commission” or the “SEC”) in its regional office in Chicago, Illinois.

8 2. I am an attorney in good standing admitted to practice by the
9 State of Illinois and admitted *pro hac vice* in this action. I make this
10 declaration in support of the SEC’s Motion for Partial Summary
11 Judgment As To Liability Against Defendant Wayne Weaver (“Weaver”).
12 I have personal knowledge of the following facts.

13 3. The following are true and correct copies of documents
14 submitted along with the SEC’s Reply Brief in support of its Motion for
15 Summary Judgment. The SEC will cite to these documents as “SJ Reply
16 Ex. __.”

17 4. Attached as **SJ Reply Exhibit 1** is a true and correct copy of a
18 categorical schedule of the documents which SEC Accountant R. Kevin
19 Barrett used and summarized in his March 29, 2017 declaration and
20 exhibits that were attached as Exhibit 1 to the Declaration of Timothy S.
21 Leiman in Support of Motion for Summary Judgment.

22 5. Attached as **SJ Reply Exhibit 2** is a true and correct copy of a
23 chart listing the 47 exhibits that the SEC submitted in support of its
24 Motion for Summary Judgment that Weaver has objected to. The chart
25 describes the bases for authenticating each exhibit.

26 6. Attached as **SJ Reply Exhibit 3** is a true and correct copy of
27 the May 9, 2017 Declaration of Marlee M. Engel, a Branch Chief in the
28 SEC’s Office of International Affairs. The Declaration describes the

1 process by which the SEC obtained documents from overseas regulators in
2 this case.

3 7. Attached as **SJ Reply Exhibit 4** is a true and correct copy of
4 the December 16, 2016 Declaration of Sohail Ajmal, Barclays Bank PLC,
5 Certifying Records of Regularly Conducted Business Activity, which is
6 bates-numbered SEC-UKFCA-P-0000009. The declaration was produced
7 by Barclays through the United Kingdom Financial Conduct Authority
8 (“FCA”) and encompasses all documents produced to the FCA by Barclays
9 in this case, including all Barclays bank records submitted as exhibits in
10 support of the SEC’s motion for summary judgment.

11 8. Attached as **SJ Reply Exhibit 5** is a true and correct copy of
12 the November 30, 2016 Declaration of Giw Izadi, VP Bank (Schweiz) AG,
13 Certifying Records of Regularly Conducted Business Activity, which is
14 bates-numbered SEC-FINMA-P-0001428. The declaration was produced
15 by VP Bank through the Swiss Financial Market Supervisory Authority
16 (“FINMA”) and encompasses all documents produced to FINMA by VP
17 Bank in this case, including all VP Bank records submitted as exhibits in
18 support of the SEC’s motion for summary judgment.

19 9. Attached as **SJ Reply Exhibit 6** is a true and correct copy of
20 the December 5, 2016 Declaration of M. Berchtold and M. Kameisis,
21 Gutenberg Administration AG, Certifying Records of Regularly Conducted
22 Business Activity, which is bates-numbered SEC-FINMA-P-0001429. The
23 declaration was produced by Gutenberg Administration AG through
24 FINMA and encompasses all documents produced to FINMA by Bank
25 Gutenberg in this case, including all Bank Gutenberg records submitted
26 as exhibits in support of the SEC’s motion for summary judgment.

27 10. Attached as **SJ Reply Exhibit 7** is a true and correct
28 copy of the December 1, 2016 Certificate of Authenticity of Business

1 Records of compliance officers Costanza Berghinz de Rosmini Alzati and
2 Agnes Arnold Kaufmann from the Legal & Compliance Private Banking
3 department of Bank Vontobel AG (successor to Finter Bank Zurich),
4 which is bates-numbered SEC-FINMA-P-0001430. The declaration was
5 produced by Bank Vontobel through FINMA and refers to (and
6 authenticates) a CD of documents provided to Bank Vontobel by the SEC
7 that included all documents produced by Finter Bank Zurich to FINMA in
8 this case, including all Finter Bank records submitted as exhibits in
9 support of the SEC's motion for summary judgment.

10 11. Attached as **SJ Reply Exhibit 8** is a true and correct
11 copy of the May 12, 2016 Declaration Certifying Records of Regularly
12 Conducted Business Activity of Y. Felber of Bank J. Safra Sarasin AG
13 ("BJSS," formerly Bank Sarasin & Cie AG), which is bates-numbered
14 SEC-FINMA-P-0001431. The declaration was produced by BJSS through
15 FINMA and refers to (and authenticates) a CD of documents provided to
16 BJSS by the SEC that included all documents produced by Bank Sarasin
17 to FINMA in this case, including all Bank Sarasin records submitted as
18 exhibits in support of the SEC's motion for summary judgment.

19 12. Attached as **SJ Reply Exhibit 9** is a true and correct
20 copy of the January 31, 2017 Declaration of Certifying Records of
21 Regularly Business Activity (sic) of Didier Peclard, Head of Legal for CBH
22 Compagnie Bancaire Helvetique SA ("CBH"), which is bates-numbered
23 SEC-FINMA-P-0001434. The declaration was produced by CBH through
24 FINMA and refers to (and authenticates) a CD of documents provided to
25 CBH by the SEC that included all documents produced by CBH to FINMA
26 in this case, including all CBH records submitted as exhibits in support of
27 the SEC's motion for summary judgment.

1 13. Attached as **SJ Reply Exhibit 10** is a true and correct
2 copy of the May 5, 2017 Declaration of Stephen B. Wheatley
3 authenticating documents.

4 14. Attached as **SJ Reply Exhibit 11** is a true and correct
5 copy of additional excerpts from the transcript of the February 7, 2017
6 deposition of Rene Berlinger in this case. This supplements the excerpts
7 originally filed as SJ Ex. 2 with the SEC's opening brief.

8 15. Attached as **SJ Reply Exhibit 12** is a true and correct
9 copy of additional excerpts from the transcript of the January 24, 2017
10 deposition of Stephen Wheatley in this case. This supplements the
11 excerpts originally filed as SJ Ex. 43 with the SEC's opening brief.

12 16. Attached as **SJ Reply Exhibit 13** is a true and correct
13 copy of excerpts from the transcript of the February 12, 2015 sworn
14 investigative testimony of Patrick R. Mokros, President of Empire Stock
15 Transfer, Inc.

16 17. Attached as **SJ Reply Exhibit 14** is a true and correct
17 copy of the Form TA-1, dated November 18, 2009, of Empire Stock
18 Transfer Inc., which was filed with the SEC. The document is publicly
19 available and may be found by searching the SEC's EDGAR database,
20 <https://www.sec.gov/Archives/edgar/data/1393905/000114036109026787/xs>
21 [IFTA1X01/primary_doc.xml](https://www.sec.gov/Archives/edgar/data/1393905/000114036109026787/xs).

22 18. Attached as **SJ Reply Exhibit 15** is a true and correct
23 copy of excerpts from Empire Stock Transfer, Inc. ("Empire") "Transfer
24 Packages" (also referred to as "transaction files") for transfers of Jammin'
25 Java stock to and from Manitou, Arcis, Timotei and Calgon. Documents
26 were produced by Empire in this litigation, and examples of such transfer
27 files were authenticated by Patrick R. Mokros, President of Empire Stock
28 Transfer at his February 12, 2015 sworn investigative testimony (*See, e.g.,*

1 SJ Reply Ex. 13, Mokros Tr. 31-36, 60-62, 72-73, 77-78, 84-85, 95-97, 104,
2 110-113, 115-116, 121-125, 132, 142-170.)

3 19. Attached as **SJ Reply Exhibit 16** is a true and correct
4 copy of a series of confirmation receipts for the sale of Jammin Java stock
5 out of the account of Manitou S.A. (account No. xxxxxxxx4_0.100.USD) at
6 Bank Gutenberg AG (“Bank Gutenberg”). The documents were produced
7 to the SEC by Bank Gutenberg through the Swiss Financial Market
8 Supervisory Authority (“FINMA”) in response to a request by the SEC
9 under the International Organization of Securities Commissions’
10 (“IOSCO’s”) Multilateral Memorandum of Understanding (“MOU”). The
11 documents bear the Bates No. FINMA-0000544 through 0000551. The
12 documents are authenticated by (1) the business record declaration of M.
13 Berchtold and M. Kameisis, Gutenberg Administration AG, (2)) the fact
14 that the they were produced by FINMA in response to a formal MOU
15 request by the SEC (*see Melridge, Inc. v. Heublein*, 125 B.R. 825, 829 (D.
16 Or. 1991)(receipt of documents by Department of Justice in response to
17 formal treaty request constitutes circumstantial evidence of authenticity),
18 and (3) the fact that account records bear specific indicia and hallmarks
19 suggesting that the documents are in fact the business records of a
20 financial institution (Fed. R. Evid. 901(b)(4)).

21 20. Attached as **SJ Reply Exhibit 17** is a true and correct
22 copy of a series of confirmation receipts for the sale of Jammin Java stock
23 out of the accounts of Westpark, Renavial and Las Colinas at VP Bank.
24 The documents were produced in discovery by Defendant Berlinger,
25 marked as Dep. Exhibits 81, 90 and 94 and authenticated during the
26 deposition of Rene Berlinger. The documents were also produced to the
27 SEC by VP Bank through FINMA in response to a request by the SEC
28 under the IOSCO MOU. The documents in **SJ Reply Exhibit 17** are

1 authenticated by (1) the testimony of Rene Berlinger (SJ Reply Ex. 11,
2 Berlinger Tr. 51:14–53:9, 64:16–66:7, and 78:24–80:16, (2) the November
3 30, 2016 business record declaration of Giw Izadi of VP Bank. (SJ Reply
4 Ex. 5.), (3) the fact that the they were produced by FINMA in response to
5 a formal MOU request by the SEC (*see Heublein*, 125 B.R. at 829 (D. Or.
6 1991)(receipt of documents by Department of Justice in response to formal
7 treaty request constitutes circumstantial evidence of authenticity), and (4)
8 the fact that account records bear specific indicia and hallmarks
9 suggesting that the documents are in fact the business records of a
10 financial institution (Fed. R. Evid. 901(b)(4)).

11 21. Attached as **SJ Reply Exhibit 18** are true and correct
12 copies of B&C Capital Inc. (“B&C”) Total Portfolio Asset Summary
13 statements for Calgon Invest SA listing transactions occurring between
14 January 1 to March 31, 2011 and April 1 to July 31, 2011, respectively.
15 The statements, which are Bates-labeled CIMA-0000184 to -0000190,
16 were produced to the SEC by CIMA in response to the SEC’s formal MOU
17 request. The statements contain the same markings, logos and other
18 distinctive characteristics as the B&C accounts statements for Petersham.
19 (*See* SJ Ex. 79 and SJ Reply Ex. 10.)

20 22. Attached as **SJ Reply Exhibit 19** are true and correct
21 copies of Spartan Securities Group (“SSG”) Statements of Account for
22 March 2011 and April 2011, respectively. The statements are
23 accompanied by a true and correct copy of a Declaration of Spartan
24 Securities Certifying Records of Regularly Conducted Business Activity,
25 signed by SSG’s Chief Compliance Officer, David Lopez.

26 23. Attached as **SJ Reply Exhibit 20** is a true and correct
27 copy of a CBH Statement of Account for Arcis Assets S.A., Bates-labeled
28 SEC-FINMA-P-0000621 to -0000623, which was produced to the SEC by

1 FINMA in response to the SEC's formal MOU request. (See SJ Reply Ex.
2 9 for CBH business records declaration.)

3 24. Attached as **SJ Reply Exhibit 21** is a true and correct
4 copy of an April 2011 Seven Points Capital ("SPC") Statement of Account,
5 accompanied by true and correct copy of a Declaration of Seven Points
6 Capital Certifying Records of Regularly Conducted Business Activity,
7 signed by SPC's Chief Executive Officer and Chief Compliance Officer,
8 Michael Mangieri.

9 25. Attached as **SJ Reply Exhibit 22** is a true and correct
10 copy of additional excerpts from the transcript of the November 20, 2013
11 investigative testimony of Anh Tien Tran, *In the Matter of Jammin Java*
12 *Corp.*, File No. C-07826-A. This supplements the excerpts originally filed
13 as SJ Ex. 67 with the SEC's opening brief.

14 26. Attached as **SJ Reply Exhibit 23** is a true and correct
15 copy of a Share Purchase Agreement between Donnolis Invest Corp. and
16 Westpark Limited (Mar. 2, 2011) (BER00000656). This document was
17 produced in discovery by Defendant Berlinger and marked as Dep. Ex.
18 104 and authenticated during the deposition of Rene Berlinger. It
19 replaces the document that was mistakenly attached as SJ Ex. 73 to the
20 SEC's opening brief.

21 27. Attached as **SJ Reply Exhibit 24** is a true and correct
22 copy of additional excerpts from the transcript of the January 26, 2017
23 deposition of Michael Sun in this case. This supplements the excerpts
24 originally filed as SJ Ex. 5 with the SEC's opening brief.

25 28. Attached as **SJ Reply Exhibit 25** is a true and correct
26 copy of additional excerpts from the transcript of the January 27, 2017
27 deposition of Mohammed Al-Barwani in this case. This supplements the
28 excerpts originally filed as SJ Ex. 20 with the SEC's opening brief.

1 I declare under penalty of perjury that the foregoing is true and
2 correct.

3 Executed May 11, 2017, at Chicago, Illinois.

4
5 s/ **Peter Senechalle**
6 Peter Senechalle
7 Senior Attorney
8 U.S. Securities and Exchange Commission
9 (*Attorney for the Plaintiff*)
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